



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0158]**

**RIN 1625-AA00**

### **Safety Zone; Delaware River, Diving Operation, Marcus Hook, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a safety zone encompassing all navigable waters within a 250-yard radius of Commerce Construction vessels and machinery conducting survey and diving operations in the Delaware River, in the vicinity of Anchorage 7, near Marcus Hook, PA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by survey and diving operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Delaware Bay.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 6 p.m. on March 22, 2018. For the purposes of enforcement, actual notice will be used from 6 a.m. on March 15, 2018, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0158 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email Petty Officer Amanda Boone, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271-4889, e-mail [Amanda.N.Boone@uscg.mil](mailto:Amanda.N.Boone@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On March 11, 2018, the Coast Guard was notified of survey and diving operations that will be taking place from March 15, 2018 through March 22, 2018, in Marcus Hook Anchorage No. 7, on the Delaware River. The COTP has determined that a safety zone is necessary to mitigate the hazards involving survey and diving operations. The safety zone covers all navigable waters within 250 yards of vessels and machinery being used by personnel to conduct survey and diving operations.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because notification of the survey and diving operations was not

given to the Coast Guard until March 11, 2018. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by March 15, 2018 to protect persons involved with the survey and diving operations as well members of the public who may be near those operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable because immediate action is needed to address the potential safety hazards associated with survey and diving operations.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with survey and diving operations starting March 15, 2018, will be a safety concern for anyone within a 250-yard radius of diving and pipe removal vessels and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the operations are being conducted.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 6 a.m. Monday, March 15, 2018, through 6 p.m. Friday, March 22, 2018. Notification of dates and times of safety zone enforcement will be sent to the maritime community via Broadcast Notice to Mariners and Marine Safety Information Bulletins. Marine Safety Information Bulletins may be obtained from <https://homeport.uscg.mil/port-directory/delaware-bay> or by calling the Coast Guard Delaware Bay Command Center at 215-271-4807. The safety zone will cover all navigable waters within 250 yards of survey and diving operation vessels, as well as any associated equipment, operating

in Marcus Hook Anchorage No. 7 near Marcus Hook, PA, on the Delaware River. The work will be conducted in the southern most portion of the Anchorage on the eastern side adjacent to the New Jersey shoreline. During diving and removal operations, the safety zone will restrict vessels from anchoring in the lower portion of Anchorage No. 7.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, duration, and time-of-day of the safety zone. The safety zone which will impact a small designated area of the Marcus Hook Anchorage No. 7, in the Delaware River, from 6 a.m. through 6 p.m., Monday through Friday, beginning March 15, 2018 through March 22, 2018. Vessel traffic will be able to safely transit the main navigational channel during that time. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16, Local Notice to Mariners, and Marine Safety Information Bulletin about the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to anchor in the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule

elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 250 yards of survey and diving operation vessels, as well as any associated equipment, operating in Marcus Hook Anchorage No. 7 near Marcus Hook, PA, on the Delaware River. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0158 to read as follows:

**§ 165.T05-0158 Safety Zone, Delaware River; Diving Operations; Marcus Hook, PA.**

(a) Location. The following areas are safety zones: all navigable waters within 250 yards of survey and diving operation vessels, as well as any associated equipment, operating in Marcus Hook Anchorage No. 7 near Marcus Hook, PA, on the Delaware River.

(b) Definitions. (1) *Captain of the Port* means the Commander, Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Delaware Bay, to assist with the enforcement of safety zones described in paragraph (a) of this section.

(c) Regulations. The general safety zone regulations found in subpart C of this part apply to the safety zone created by this section.

(1) Entry into or transiting within the zone is prohibited unless vessels obtain permission from the Captain of the Port via VHF-FM channel 16, or make satisfactory passing arrangements via VHF-FM channels 13 or 80 with the on-scene 25 foot diving vessel.

(2) No vessels may anchor in the lower portion of Marcus Hook Anchorage No. 7 for the duration of the enforcement period.

(3) All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) Enforcement periods. This section will be enforced from 6 a.m. through 6 p.m., Monday through Friday, beginning March 15, 2018, through March 22, 2018.

Dated: March 14, 2018.

Scott E. Anderson,

Captain, U.S. Coast Guard,

Captain of the Port, Delaware Bay.